

Nebraska Department of Education Supervisor's Guide to Corrective And Disciplinary Action

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INTRODUCTION

Employees are a valuable resource in which the Department invests considerable time and money. To protect this investment, it is the responsibility of a supervisor to help each employee become and remain an efficient and productive worker.

Your goal as a supervisor should be to maintain a productive work environment and promote self-discipline. Employees with self-discipline choose to abide by the rules and standards of good conduct, thus reducing or eliminating the need for disciplinary action. However, there may be occasions when it is necessary for you to implement either corrective or disciplinary action and this document is intended to guide you through that process.

Through corrective or disciplinary measures supervisors can communicate about performance deficiencies, set standards, and direct improvements. Supervisors can positively impact performance, however, a supervisor can't force success. Ultimately, employees are responsible for deciding whether he or she wishes (or is able) to favorably respond to the requirements of a particular job, as opposed to being forced to meet the job performance requirements.

A technique often utilized in correcting behavior is termed “progressive discipline” when the disciplinary action taken for misconduct increases in severity when there is a lack of improvement. Each step in progressive discipline is designed to stimulate a change in the behavior that began the disciplinary process. After routine supervisory guidance has not succeeded in changing the appropriate behavior, the usual sequence is: Oral counseling, written warning, administrative probation, suspension, and dismissal. The goal is to apply the minimum level of corrective or discipline action that will bring the employee’s performance up to the expected level. However, if an offense is serious enough to justify imposing a heavy penalty such as suspension or dismissal, it is not necessary to implement progressive disciplinary steps.

Supervisory Responsibilities

Supervisors must be familiar with the bargaining agreement and the personnel rule provisions that apply to the initiation of the disciplinary process and employee due process rights. (See Article 18 of the NDE-NAPE/AFSCME Bargaining Agreement and Chapter 13 of the NDE Personnel Rules.)

In your responsibilities as a supervisor, you should be aware that there are things employees need to be informed of to more effectively and efficiently perform their job responsibilities. You are responsible for seeing that each employee is informed of the following:

- ☐ The policies, rules and regulations that govern the employee’s work.
- ☐ The proper kind of behavior expected of the employee.
- ☐ The duties and tasks the employee is expected to perform as reflected in a job or position description.
- ☐ What you, as a supervisor, consider the standards of performance for the job.
- ☐ How well the employee is meeting those standards of performance (communicated informally on a regular basis and annually through the Performance Appraisal document).
- ☐ How the employee’s work can be improved and better working capabilities developed (communicated informally and through the corrective action plans in the Performance Appraisal document).
- ☐ The provisions in either the Bargaining Agreement or NDE Personnel Rules that apply to the initiation of the disciplinary process and employee rights.

If and when an employee violates a rule or performance standard, you need to be able to answer “yes” to all of the following questions:

- ☐ Was the rule or standard properly communicated to employee?
- ☐ Was the employee aware of the rule or standard?
- ☐ Does the employee understand what the rule or standard means?
- ☐ Is the rule or standard reasonable and job-related?
- ☐ Has the standard been consistently applied and enforced with other employees?

Violations should not go uncorrected, or employees can come to regard them as accepted practices.

Reasons for Imposing Disciplinary Action

The following list shows examples of offenses for which a supervisor may take disciplinary action (see Article 18 of the NDE-NAPE/AFSCME Bargaining Agreement or Chapter 13 of the NDE Personnel Rules):

1. Violation of, or failure to comply with, the state Constitution, any statute, an executive order, published rules and regulations of the Department; policies including work rules, the NDE-NAPE/AFSCME Agreement; or administrative memoranda.
2. Failure or refusal to comply with lawful order or to accept a reasonable or proper assignment from an authorized supervisor.
3. Inefficiency, incompetence, or negligence in the performance of duties.
4. Careless, negligent, improper, or unsafe use of state property, equipment, or funds.
5. Use of undue influence to gain or attempt to gain promotion, leave, favorable assignment, or other individual benefit or advantage.
6. Falsification, fraud, or willful omission of information when applying for a position, performing the duties of a position, or completing records or reports relevant for the Department.

7. Unauthorized or improper use of any type of leave, repeated tardiness, or absence without leave.
8. Failure to maintain satisfactory working relationships with the public, with other employees, or with persons placed under direct care and responsibility of the employee.
9. Failure to obtain and maintain a current license required by law or Department standards as a condition of employment.
10. Violation of any provision of the Department's Code of Ethics, which is located in the Personnel Rules, Title 93 of the Nebraska Administrative Code.
11. Conduct which brings discredit to the Department, the State or which impairs an employee's services.
12. Unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance or alcoholic beverage in the workplace, or reporting for duty under the influence of alcohol and/or unlawful drugs.
13. Work place harassment based, in whole or in part, on race, color, sex, sexual orientation, religion, age, disability, or national origin, which manifests itself in the form of comments, jokes, printed material, and/or unwelcomed sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.
14. Display of obscene materials and/or the utterance of comments in the workplace that are derogatory toward a group or individual based upon race, sex, sexual orientation, color, religion, disability, age, or national origin.
15. Possession of any type of firearm during the course of performing their job. This prohibition includes transporting firearms into any work site or in a state vehicle.

Steps To Take When Performance Problems Do Occur

Supervisors should practice preventative measures and guide employees in attempts to correct undesirable situations and address performance problems. However, there are times when these methods just do not work and supervisors must implement corrective or disciplinary action.

Informal Discussions

The first step to correct a minor rule or policy violation can be an informal, private discussion between the employee and the supervisor. During such a discussion, it is important for a supervisor to be specific about the behaviors that need to be corrected. Often opportunities for informal discussions are missed. Supervisors want to believe that even though there is evidence of unsatisfactory performance, it will not happen again. Rarely is this the case! Instead, the offense most likely will be repeated if it is not addressed when first observed. Once a pattern of undesirable behavior is established, especially with new employees, it is much harder to re-establish the proper behavior.

During the informal discussion, employees have an opportunity to be reminded of a rule and to take responsibility for his or her own behavior. It is also a notice to the employee that you are aware of a problem. For example, let them know you have noticed them arriving late, and they need to be here at 8:00 a.m. It is a perfect time for you to be constructive, offer help, and practice positive discipline. Keep in mind that if you involve the employee in solving the problem, you can increase buy-in and follow through in the solution. An informal discussion is not meant to threaten, embarrass, or verbally abuse. It is to make the employee aware of a problem and that you have a noted concern. This step is often referred to as “putting the employee on notice.”

Creating an awareness of the problem is important because if an employee does not recognize that a problem exists, he or she will have no reason to change his or her performance or behavior.

Minor infractions generally occur because the employee was not told the rules, did not understand your expectations, was not aware of specific rules, or was determining the limits of what was allowable.

Documentation. Supervisors should document, for their own records, the incident including the date and the discussions that occur regarding the situation. This should be done even though informal discussions are intended to correct the problem situation without beginning a formal action. Notes at this level are not placed in the employee’s personnel file.

Note: The Employee Assistance Program (EAP) can be a valuable resource as part of corrective or disciplinary action. Different types of services and referrals are available for the employee and/or you, as a supervisor, depending on the type of

problem you are experiencing. For more information on how you can incorporate EAP resources into a particular situation, please contact either Human Resources or Legal staff.

When is formal corrective or disciplinary action warranted?

In general, you should begin formal corrective or disciplinary action when informal measures (routine supervisory counseling, informal discussion, or corrective action plans in the Performance Appraisal document) have failed to bring about the desired change in behavior. You should also begin formal corrective or disciplinary action in cases where informal measures have failed to sufficiently address the serious nature of an offense. But how do you know for sure when a situation warrants formal corrective or disciplinary action? To make this determination, first consider the following questions: (Adapted from Article 18.2 of the Bargaining Agreement.)

- ☐ How severe, by normal standards, was the problem? Was it deliberate or unintentional?
- ☐ What are the surrounding circumstances?
- ☐ What rule or policy has been violated?
- ☐ Is the current problem part of an emerging or continuing pattern of discipline infractions?
- ☐ Did the employee receive adequate forewarning of the consequences of misconduct?
- ☐ What has been done in the past to correct the undesired behavior observed?
- ☐ Did the Department investigate the incident and give the employee an opportunity to respond to the allegations prior to administering discipline?
- ☐ Has the Department applied this rule or order and penalties for misconduct consistently among other employees?
- ☐ Was the degree of discipline reasonable, relative to the seriousness of the offense?

Initiating formal corrective or disciplinary action.

According to Article 18.2A of the Bargaining Agreement, you must give the employee an opportunity to refute the allegations or present mitigating evidence within thirty (30) work days of obtaining any information indicating the possibility of administering corrective or disciplinary action or completing an investigation.

It may be necessary for a supervisor to conduct a fair investigation into the alleged incident or action, including talking to relevant witnesses prior to deciding if there is cause for corrective or disciplinary action. If an investigation is necessary, the supervisor should initiate the following steps:

1. Contact Legal staff to discuss the investigation process and ensure that the Department is legally complying with the provisions of the Bargaining Agreement and/or Personnel Rules.

Note: An employee may be placed on investigatory suspension, if necessary, pending completion of the investigation.

2. To begin formal action, the supervisor must prepare a written notice of allegations and give it to the employee. The written notice of allegations should contain an explanation of the Department's evidence against the employee, a description of the incident involved, and the date/time of the occurrence. The notice should also include a direct reference to the rule or policy violated, including necessary references to the Bargaining Agreement or Personnel Rules.
3. The supervisor should schedule a meeting with the employee to discuss the allegations contained in the written notice. According to Article 18.2A of the Bargaining Agreement, you must give the employee an opportunity to refute the allegations or present mitigating evidence within 30 days of obtaining any information indicating the possibility of administering corrective or disciplinary action or completing an investigation. During the meeting to discuss the allegations:
 - ☐ Remember that this is the employee's opportunity to tell you about any mitigating circumstances the employee believes should be considered and to refute any of the evidence.
 - ☐ No pre-determination of the employee's guilt or innocence should be given at this meeting.
 - ☐ Avoid getting into a debate with the employee regarding the allegations. This is the employee's time to present information to you.
 - ☐ If an employee or his/her representative becomes angry, threatening, or out of control, discontinue the meeting and call Security or law enforcement, if necessary.
4. After the meeting, the supervisor should consider all of the evidence including the employee's statements regarding the allegations. It is very important

that the severity of the corrective or disciplinary action be consistent with the offense committed.

5. Consult with General Counsel's Office or the Human Resources Office regarding corrective disciplinary options.
6. Make a determination as to whether corrective or disciplinary action is necessary. Keep in mind what you want to accomplish by implementing corrective or disciplinary action. The disciplinary action taken by the supervisor should be aimed at guiding the employee, strengthening the employee's self-discipline, and improving the employee's work behavior. The action that is sufficient to accomplish the desired change should be selected. Generally, less severe actions are more appropriate for first offenses than for repeated offenses. However, a serious first offense may justify imposing a heavy penalty such as suspension or dismissal.

Be consistent and fair. You should impose the same corrective or disciplinary action for the same offense committed under similar circumstances by employees with similar work records.

7. Promptly notify the employee of your decision and the corrective or disciplinary action being taken. For bargaining unit employees, according to Article 18.2A of the Bargaining Agreement, if action has not been taken within 2 months of the date you discussed the allegations with the employee, no action may be taken on that set of allegations or circumstances.

Corrective Actions

Oral Counseling (see Article 18.5 of the Bargaining Agreement and Chapter 13, Section 003.01 of the NDE Personnel Rules)

Counseling consists of a private conversation with the employee, during which the supervisor explains in detail the reasons for the counseling and works with the employee to determine the action required to correct the issue that caused the counseling to occur.

During the counseling session:

- ◆ Keep the session professional and impersonal. Be firm, fair, and courteous. Be sure the problems discussed are job related and not of a personal nature.
- ◆ Keep in mind that your objective is to correct the employee's observable behavior; not accuse or recriminate.

- ◆ State the problem clearly, as you understand it. Review and clarify the rule or policy and the reason(s) for its existence.
- ◆ Be specific as to the kind of behavior you expect. Include examples of changes you require from the employee and indicate how the changes will be measured.
- ◆ Stick to a specific subject. Do not apologize for the session or find excuses for the employee's behavior. Do not use the session to wander into non-related issues.
- ◆ Maintain a helpful attitude. Work sincerely with the employee to plan for a change in behavior.
- ◆ Respect the employee's dignity and right to a viewpoint.
- ◆ Stay calm. Do not bluff, threaten or argue.
- ◆ Above all, express confidence in the employee's ability to improve. The session should remain positive, with assurances that the intent is to help the employee.
- ◆ A written record of the oral counseling may be prepared if a copy is provided to the employee, however, the record shall not be placed in the employee's personnel file.
- ◆ Set deadlines for specific measurable change in the employee's behavior.
- ◆ Explain future consequences if corrective changes are not made.

If the employee becomes overly emotional or upset, or if you think the employee is becoming violent, stop the meeting and schedule a time to finish the discussion.

Note: Coaching Guidelines with examples of statements you can utilize during a counseling session are available in the Human Resources Office.

After the counseling session:

- ◆ Follow up and follow through. Check the employee's progress against the expected change. Implement corrective action in which the employee is informed of the performance expectations and schedule regular meetings to review performance and specify corrections.
- ◆ Document when the employee has made the change or note that the employee failed to make the change.
- ◆ Keep your own supervisor adequately informed. If the situation warrants, supply a copy of your record of the session and reports of the follow-up actions to your supervisor.

Written warning (see Article 18.6 of the Bargaining Agreement and Chapter 13, Section 003.02 of the NDE Personnel Rules)

A warning must be in writing on the official NDE form, which may be obtained from either the Human Resources Office or the General Counsel's Office. The warning must include an oral conference between the supervisor and the employee, identify the reason for the warning, and state the plan of action to correct the cause or problem. The warning should also identify the course of action the employee can expect if the problem is not satisfactorily remedied.

Both the supervisor, the next level of supervisor, and the employee must sign the written warning. The employee has the opportunity to attach written rebuttal. The original copy of the written warning must be filed with the Human Resources Office. The written warning becomes inactive after ninety days unless the section on page 2 of the form is completed and it is renewed in writing. A warning can only be extended once for another ninety (90) day period. All record of the written warning is removed from the employee's personnel file ninety (90) days after it shall become inactive.

Investigatory Suspensions

Investigatory Suspension With Pay (see Article 18.3 of the Bargaining Agreement and Chapter 13, Section 002 of the NDE Personnel Rules)

An investigatory suspension is an ordered absence from duty while on full pay status for a prescribed period of time. Investigatory suspensions with pay are not grievable. An investigatory suspension with pay may be ordered only upon the approval of the Deputy Commissioner. This action allows for immediate response to a suspected but not fully substantiated offense, or for a period in which an investigation can be thoroughly pursued, or for other reasons at the discretion of the Deputy Commissioner.

Disciplinary Actions

When disciplinary action is taken, you must track the employee's progress against an established timetable. Document when the employee has made the agreed upon changes, and inform the employee of such action. If the employee's behavior does not improve, consider additional disciplinary action. Your own supervisor should be informed of situations when disciplinary action is administered.

Keep in mind, disciplinary action may lead to the filing of a grievance. All non-probationary employees have the right to grieve disciplinary actions, including dismissals. Grievance of a disciplinary action by the employee, however, does not postpone the action. (See Article 17 of the Bargaining Agreement and Chapter 14 of the Personnel Rules for information on the grievance process.)

Administrative Probation (see Article 18.9 of the Bargaining Agreement and Chapter 13, Section 004.03 of the NDE Personnel Rules)

Administrative probation can be a very effective form of discipline when employees are experiencing problems with job-related performance. Through one-on-one counseling, supervisors monitor performance during a specified period of time and encourage employees to improve performance-related problems. For bargaining unit employees, administrative probation may be imposed in writing for a period of up to six months by the appropriate Leadership Council member, but may be extended to a total of one year by the Deputy Commissioner. For non-bargaining unit employees, administrative probation may be imposed in writing by the Deputy Commissioner. During the administrative probationary period the employee must improve identified deficiencies in their performance.

Employees on administrative probation cannot be promoted or granted pay increases. It is critical that should the supervisor not see an acceptable improvement in performance during the probationary period, he or she obtain an extension prior to the expiration of the probationary period. Once an employee reaches the six (6) month date when the probation expires, the supervisor cannot retroactively extend the probation. Employees granted vacation, sick, holiday, bereavement, civil, administrative, or military leave while serving administrative probation may have their probation extended by the number of days absent on leave, provided the employee receives notice of the extension prior to the expiration of administrative probation. Administrative probation requires that the supervisor meet regularly with the employee to assist him or her in improving performance.

Suspension Without Pay (see Article 18.7 of the Bargaining Agreement and Chapter 13, Section 004.01 in the NDE Personnel Rules)

Suspension must be ordered in writing by the Deputy Commissioner. The suspension suspends an employee from employment without pay for a definite period of time. A written document informing the employee of suspension shall be dated, include the reason(s) for the suspension without pay, and indicate the number of days of the suspension.

While employees are suspended without pay, they shall not be granted vacation, sick, or holiday leave nor unused compensatory time off.

Note: A suspension without pay may affect insurance coverage and the employee's service date.

Disciplinary demotion (see Article 18.8 of the Bargaining Agreement and Chapter 13, Section 004.02 of the NDE Personnel Rules)

Disciplinary demotion is a reassignment of an employee from his or her present position to one of lesser responsibility and/or authority and at a lower paygrade. A disciplinary demotion may be ordered only upon the written approval of the Deputy Commissioner.

A request for disciplinary demotion shall be in writing with full documentation, signed by the supervisor and the Leadership Council member of the respective team. The disciplinary demotion shall be signed by the Deputy Commissioner and shall become a part of the employee's official personnel file.

Dismissal (see Article 18.10 of the Bargaining Agreement and Chapter 13, Section 004.04 of the NDE Personnel Rules)

Removing an employee from employment with the Department is recommended when the employee has failed to respond to previous disciplinary actions or when extreme circumstances render any preceding steps unnecessary or inappropriate. A supervisor must make a recommendation to his or her supervisor and/or the appropriate Leadership Council member. If the next level of supervision and/or the Leadership Council member agrees with the recommendation it proceeds to the Commissioner, who will afford the employee an opportunity to meet and present any additional information he or she wishes to have considered. Subsequently, the Commissioner will forward his recommendation to the State Board. The employee can appeal the Commissioner's recommendation and request a hearing. Typically the hearing will be held before a hearing officer appointed by the State Board, the hearing officer will submit a recommendation to the State Board, and the State Board will vote on the final decision regarding the employee's dismissal.

Records and Documentation

It is essential to create and maintain complete and accurate records. The Department must have the necessary data in writing to support disciplinary action(s). This information should include, but not be limited to, notes and memos of informal supervisory suggestions and guidance, counseling session records, and records of written warnings. These documents must specify details of work-related behavior problems, (include date, time, place, witnesses), performance appraisals, and records of counseling sessions, work records, and the employee's job or position descriptions.

Documentation which reflects unfavorably on an employee must not be placed in the employee's personnel file without his/her knowledge. Information gathered by

supervisors to construct a performance appraisal must be kept in a separate supervisory file and should include information on good or outstanding performance as well as information relating to needed improvements in performance.

Documentation checklist

- ◆ Did you record the documentation promptly, while your memory was still fresh?
- ◆ Have you documented the date, time, location and people involved in the incident(s)?
- ◆ Did you record the action taken or the behavior exhibited?
- ◆ Have you listed the specific performance standards, rules or regulations violated or exceeded?
- ◆ Did you record the consequences of the action or behavior on the employee's total work performance and/or the operation of the work unit?
- ◆ Did you indicate your response to the action or behavior?
- ◆ Did you indicate the employee's reaction to your efforts to modify his or her behavior?

Failure to document charges

Implementing disciplinary action can be problematic if there is no documentation indicating that the employee has been previously advised of shortcomings and has been given an opportunity to improve performance.

Inconsistent documentation of performance

Training, counseling, and written warnings are all important in the documentation process. When disciplinary action is taken for causes which are normally documented over a period of time, such as incompetence, inefficiency, etc., the chances are good that the action will be reversed if performance ratings or evaluations consistently show the individual as "average" or better. This is particularly true if the ratings and appraisals cover the same period of time as the deficient work performance. Performance ratings, promotional evaluations, and disciplinary correspondence must accurately appraise the employee's performance.

Probationary Employee Dismissal

Supervisors should make effective use of the original probationary period during which employees demonstrate abilities to satisfactorily perform assigned duties and responsibilities. During the probationary period there may be occasions when it becomes evident that the employee is not making satisfactory progress. For example, the employee may not be performing at a level typical for new employees who have been with the Department for a similar period of time or performance appraisal ratings are not evolving into an overall competent level of “meeting expectations.”

Probationary employees may be dismissed from employment upon written notice from the appropriate Leadership Council member if the employee’s performance has not been acceptable (see Article 6 of the Bargaining Agreement and Chapter 5 of the NDE Personnel Rules). Probationary employees are not entitled to the same due process protections (formal notice regarding performance deficiencies, appeal rights, etc.) as permanent employees receive prior to dismissal. However, the possibility of dismissal should not be a surprise to the employee since the supervisor frequently appraises performance throughout the probationary period.

In the event that a supervisor decides that a probationary employee should be dismissed from employment, he or she should confer with his or her Leadership Council member, Human Resources Office and the General Counsel’s Office. General Counsel will assist the supervisor and Leadership Council member with the dismissal process.

Conclusion

This information has been prepared by the NDE General Counsel’s Office to assist you with your supervisory responsibilities. If you need additional assistance or advice, please contact Scott Summers at 471-7828.

